IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.7712 OF 2004

Chatrapati Sahakari Sakhar Karkhana Ltd. ...Petitioner

Vs.

Smt.Sakhubai Dhondiram Ghadge and Anr. ...Respondents

....

Mr.K.S.Bapat for Petitioner
Mr.V.N.Tayade with Mr.Dilip Bodke for Respondent no.1

....

CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 8,2005

P.C.:

1. Heard Mr.Bapat, the learned counsel for the petitioner-sugar factory and Mr.Vinod Tayade with Mr.Bodke, the learned counsel for the respondent no.1.

2. The respondent had approached the Industrial Court at Pune in Complaint (ULP) No.274 of 2001 alleging unfair labour practice under Item Nos. 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971 praying for directions to pay her salary in the pay-scale applicable to the post of Mazdoor though she was employed as an ‘Aaya’ in the dispensary run by the petitioner-sugar factory right from 1988. The said complaint was opposed by the sugar factory by

filing written statement and after hearing the respective parties, the learned Member of the Industrial Court vide the impugned judgment and order dated 2nd August, 2004 was pleased to allow the complaint partly by holding that the petitioner-Karkhana was guilty of unfair labour practice within the meaning of Item 9 of Scheule IV of the Act and therefore, the factory has been directed to pay salary to the complainant in the pay-scale of Mazdoor from the date of filing of the complaint on 31st August, 2001.

3. Mr.Bapat, the learned counsel submitted that the complaint was highly belated and there was no reason to condone the delay, in the agreements signed between Karkhana and the representative Union, there was no pay-scale fixed for the post of ‘Aaya’ and the complainant having accepted the terms of employment to work on a consolidated salary, was estopped from claiming the pay-scale as applicable to the post of Mazdoor in the said settlement, more so, because the post of ‘Aaya’ was not comparable with the post of Mazdoor. He also submitted that though the Central Wage Board’s recommendations are on the lines to have parity of pay-scale for the post of ‘Aaya’ and Mazdoor, the same recommendations have not been implemented by way of settlement between the parties. The employer could not be held to be guilty of unfair

labour practice within meaning of Item 9 of Schedule IV of the Act.

4. There is no dispute that the complainant was a full time employee and was in continuous service right from 1988 on a consolidated salary and by the time, she had filed the complaint, she was being paid monthly salary of Rs.900/- in all. The nature of work performed by an ‘Aaya’ in terms of Skills, cannot be comparable with the duties of Mazdoor but certainly the nature of her duties could not be in any way lower than or inferior to the post of Mazdoor. If the post of ‘Aaya’ is not mentioned in the settlement, it cannot be accepted that the employee working as ‘Aaya’ had no remedy to approach the Industrial Court seeking enforcement of the settlement for fixing her salary in the pay-scale of Mazdoor which is the lowest post in the said settlement.

5. The Industrial Court has rightly appreciated the evidence placed on record including the settlement as well as the recommendations of the Central Wage Board and the said recommendations have been considered only for the purpose of parity between the post of ‘Aaya’ and Mazdoor. It rightly held that there was no case made out regarding unfair labour practice under item 5 of Schedule IV by comparing the case of

Mrs.Tengale. Nevertheless, its findings that the petitioner-Karkhana had engaged in unfair labour practice within the meaning of item 9 of schedule IV are, well supported. The complaint was for implementation of the settlement by fixing her salary in the pay-scale as applicable to the post of Mazdoor and the Karkhana had not taken steps to consider her representation if any.

6. Under the circumstances, there is no case made out to cause interference in the reasoning set out by the Industrial Court and the equitable order of granting relief from the date of filing of the complaint-rather than from the date of appointment as claimed by the complainant-employee.

7. Petition is therefore, rejected summarily.

[B.H.MARLAPALLE,J.]